



Appeal Decisions

Site visit made on 3 May 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal A Ref: APP/U2805/C/22/3300462

2, The Brontes, Corby, NN17 2NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Leonard Durici against an enforcement notice issued by Corby Borough Council.
 - The notice, numbered 20/0064/UNAUTH, was issued on 11 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use from Use Class C3 Dwelling house to sui generis house in multiple occupation for up to 10 persons.
 - The requirements of the notice are to: 1) Cease the house in multiple occupation use for up to 10 people, in its entirety; 2) Reduce the number of residents living at the property to no more than 6 at any time.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.]
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Appeal B Ref: APP/U2805/W/22/3298816

2 The Brontes, Corby, NN17 2NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Leonard Durici against the decision of Corby Borough Council.
 - The application Ref NC/22/00028/DPA, dated 25 January 2022, was refused by notice dated 14 March 2022.
 - The development proposed is the retrospective application for change of use of residential to HMO for 10 people.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of points 1 and 2 in the paragraph headed "What you are required to do" and replacement with the words "Cease the use of the Land as a sui generis house in multiple occupation for up to 10 people."
2. Subject to the corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

The Notice

4. The allegation is of the material change of use of the property to a sui generis house in multiple occupation for up to 10 persons. The requirements are to 'cease the house in multiple occupation use for up to 10 people, in its entirety' and 'reduce the number of residents living at the property to no more than 6 at a time.'
5. The requirement to cease the alleged use indicates that the purpose of the notice is to remedy the breach of planning control, in this case the material change of use. The Council states that the previous lawful use was as a Class C3 Dwellinghouse, which is the use as a dwellinghouse by a single person or people living together as a family, or by not more than 6 residents living together as a single household (including a household where care is provided for residents). It is possible to have a house where more than 6 people are living together as a family which falls within this definition.
6. The second requirement is therefore excessive as it would restrict the lawful use of the property as a C3 dwellinghouse. I direct that the second requirement should be removed in its entirety, and that, in order to provide clarity, the first requirement should be corrected so that it provides that the use as a sui generis house in multiple occupation for up to 10 people ceases. These corrections can be made without causing injustice to the parties.

Appeal A - Ground (a) and the deemed planning application, and Appeal B

7. The main issues are the effect of the development on highway safety, particularly in relation to the parking of vehicles in close proximity to road junctions, and the living conditions of the occupiers of the development.
8. There are some differences between the proposed plans submitted in Appeal B compared to the layout of the property as it was at the time of the issue of the notice. Most significantly, in Appeal B one of the first-floor bedrooms is proposed to be a bathroom and fewer bedrooms are shown on the ground floor. However, Appeal B is for the retrospective use of the property as a sui generis HMO for up to 10 people which is the same use as that alleged in the notice and therefore the deemed planning application. The issues arising are therefore very similar but taking account of the fact that Appeal B does propose an additional bathroom and two fewer bedrooms.
9. The appeal property is situated in a residential estate at the end of a row of houses at the junction of Burns Drive and Willow Brook Road. During the time of the site visit it was laid out with four bedrooms, a kitchen/dining area, a further kitchen, a single shower room, a separate single WC and sink, and a shower room with WC on the ground floor, and a bathroom with shower and toilet and five bedrooms on the first floor. Two doors provided access from the ground floor to the rear outside area and the front door was accessed from the closed off underpass area.

Highway Safety

10. The Council has severe reservations regarding the parking survey provided by the appellant and states that the development would require the space for eight on-street parking spaces. The Highway Authority have advised that one space per bedroom would be required to meet the relevant parking standards. The appellant's highway consultant accepts this and undertook their survey

based on this figure, and also assuming that there were two parking spaces provided on the appeal site.

11. The parking survey does not record whether any of the residents were in fact parking within the appeal site at the time of the surveys which were undertaken during the night in a quieter period i.e. January, over four mid-week and weekend dates. However, even accepting that the development was occupied for the alleged use at the time of the survey, and that two spaces could be provided on the site, the survey only records two nights out of the four when the full quota of required on-street spaces were available.
12. Taking the Council's case at its highest, it is not their case nor that of the Highway Authority that the development would cause an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe as required by the National Planning Policy Framework ('the Framework'), which is a material planning consideration, if refusing development on highway grounds. However, Policy 8 of the North Northamptonshire Joint Core Strategy ('the Core Strategy') advises that development should have parking provision in accordance with adopted standards which has not been proven here, and this conflict arises in both appeals.

Living conditions

13. The appeal property has all of the facilities required for private domestic existence but the Council's case is that it does not benefit from adequate amenities in the form of bathrooms, toilets and kitchens nor living areas or adequate associated external amenity space for 10 people, and that these facilities are not to the high standard of amenity required by National Planning Policy Framework.
14. The rear outdoor area is allocated by the appellant for the parking of two vehicles and this therefore restricts its amenity value for use by the residents as outdoor space. There is also some space at the front of the house, but this is partially covered by the first-floor level of the property and originally formed an underpass into The Brontes from Burns Drive. Whilst it is clearly used by the residents as outdoor space, it is not very large or welcoming with extremely reduced light, and, as the Highway Authority have referred to it being public highway with no evidence of it having been legally stopped up, I am also unclear as to its legal status.
15. Taken together, the front and rear areas of outdoor space are inadequate as private external amenity space for 10 people, because the rear area is shown as accommodating two car parking spaces and is open to the public highway on Burns Drive, and that the legal status and therefore guaranteed ongoing use of the former underpass is far from clear.
16. The HMO licensing regime is separate from that of planning, and I have not been provided with definitive information about what would be required in the property to be adequate for a HMO licence for 10 people. However, the bedrooms were generally very small with the only communal areas currently provided in the two kitchens, only one of which also had space for seating. The proposed plans in Appeal B do show there to be two fewer bedrooms on the ground floor and this space is shown as an additional living area which would overcome the lack of internal space in that appeal only.

17. However, there was very little space overall within the property as part of the deemed planning application in Appeal A, and lack of sufficient outdoor amenity space on both appeals, in which to accommodate 10 people and the development was therefore in conflict with Policy 8 of the Core Strategy and paragraph 130(f) of the Framework.

Other considerations

18. The appellant argues that there is a local need for this type of shared affordable housing but has not provided any evidence to support this, and indeed, as part of the general housing market, is not suggesting that it would fall within the definition of affordable housing found within the Framework. I therefore accord this consideration limited weight.

Conclusion on Appeal A - Ground (a) and Appeal B

19. The development causes harm to the living conditions of the occupants (present and future) of the development and does not make adequate parking provision and is therefore in conflict with Policy 8 of the Core Strategy, which amongst other things seeks to secure a high quality of development which protect the amenity of future occupiers. As there are no other considerations which outweigh this conflict the development in both appeals is contrary to the Core Strategy overall, as well as the Framework and should be refused planning permission. Appeal A, ground (a) and Appeal B do not therefore succeed.

Ground (g)

20. The appellant sought additional time in which to comply with the notice as Appeal B was also outstanding. However, as both of these appeals have been dealt with together this is no longer a relevant consideration and the appeal on ground (g) therefore fails.

Zoë Frank

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/U2805/C/22/3300462	Mr Leonard Durici
Appeal B	APP/U2805/W/22/3298816	Mr Leonard Durici